

office switch, or equivalent facility, and delivery of such traffic to the called party's premises.”<sup>46</sup> The Commission has determined that a paging terminal performs this termination/switching function because “it receives calls that originate on the LEC's network and transmits the calls from its terminal to the pager of the called party.”<sup>47</sup> The Commission concluded that paging networks perform this switching function when the paging terminal “directs the page to the appropriate transmitter in the paging network, and then that transmitter delivers the page to the recipient's paging unit. The terminal and the network thus perform routing or switching and termination.”<sup>48</sup> The Commission found that this process was “equivalent of what an end office switch does when it transmits a call to the telephone of the called party.” Indeed, the Commission found that simply the act of broadcasting the call over the paging network to enable its customers to receive messages constituted a “significant switching function.”<sup>49</sup>

A CMRS network performs significantly more switching functions than the broadcasting performed by the one-way paging networks at issue in the TSR Order. CMRS networks establish two-way voice connections between the calling party and called party. Granted, this connection is not established by the base station alone. The switching function requires the coordination of centralized controllers and the electronics and transmitters located at the base station. That the establishment of a communications path requires coordination between the base station and MSC does not alter the conclusion that base stations perform critical switching functions.

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<sup>46</sup> 47 C.F.R. § 51.701(d).

<sup>47</sup> TSR Order, 15 FCC Rcd at 11178, ¶ 22 (2000).

<sup>48</sup> Id.

<sup>49</sup> Id. at n. 86.

**B. The Dedicated Transport Definition Should Be Broadly Construed.**

The 1996 Act delegates to the Commission the responsibility of identifying which particular network elements should be unbundled.<sup>50</sup> With respect to interoffice transmission facilities, the Commission's policy underlying its rules is clear. Telecommunications competition will not thrive unless incumbent LECs share their economies of scale and scope by providing access to their ubiquitous transport networks at cost-based rates.<sup>51</sup> CMRS providers, as demonstrated above, are "requesting telecommunications carriers" for purposes of section 251(c)(3). However, that determination would be meaningless if CMRS carriers were precluded from obtaining UNEs merely because they employ a different physical network technology than wireline competitive carriers. Denying access to dedicated transport because the mobile networks require more centralization of call processing -- and cannot locate at the base station all of the processing functions a wireline carrier can locate at an end office -- would undermine the broad reading that Congress intended and further undermine the Commission's goal of implementing competition policy in a technology-neutral manner. Indeed, under the incumbent LECs' interpretation of the Commission's rules, having first determined that CMRS carriers are eligible to obtain the benefits of unbundled network elements, the Commission would then draft a rule that precluded such carriers from obtaining the one network element, dedicated transport, that they most need. Such an interpretation is nonsensical. The Commission should interpret its definitions in a way that gives affect to the underlying purposes of making transport available as UNEs. Carriers require access to the incumbent's ubiquitous transport networks to carry traffic

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<sup>50</sup> 47 U.S.C. § 251(d)(2).

<sup>51</sup> Local Competition Order, 11 FCC Rcd at 15508, ¶ 11.

between aggregation points and nodes in the requesting carrier's network. Base stations are clearly nodes and aggregation points, as demonstrated above. The Commission should interpret its rules defining dedicated interoffice transport in a way that gives effect to the fundamental policies of the 1996 Act. Moreover, interpreting the definition of dedicated transport to include transport to and from base stations would further intermodal, facilities-based competition.

The Commission should declare that transport links to base stations qualify as dedicated transport because base stations are switches, or perform functions equivalent to end offices. An agency's power to interpret its own regulations in a manner that suits its already-stated policy goals is quite broad. Simply stated, an agency is empowered to clarify "what it meant" when it adopted a particular regulation. Such clarifications are exempt from the Administrative Procedures Act ("APA") notice and comment rule making because they are interpretive in nature, and do not create new obligations.<sup>52</sup> In this case, the Commission may clarify that what it meant by "switch" in 47 C.F.R. 51.319(d) is not limited to wireline, circuit switches, but equipment that performs equivalent functions, even utilizing different technology. A contrary view, of course, would hold that the agency must exhaustively codify each of its policies as explained in its decision and has no room for after-the-fact clarifications. This narrow view of agency authority has been soundly rejected by the Supreme Court.<sup>53</sup>

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<sup>52</sup> See 1998 Biennial Regulatory Review; Part 76 - Cable Television Service Pleading and Complaint Rules, CS Docket No. 98-54, Order on Reconsideration, 14 FCC Rcd 16433, 16437, ¶ 8 (1999) ("Section 553 of the APA excepts from the notice and comment requirements interpretative and procedural rules. Interpretative rules are agency statements of general effect in which the agency announces an interpretation of a statute or of another rule.").

<sup>53</sup> See SEC v. Chenery Corp., 332 U.S. 194, 202-03 (1947).

The CMRS Petitioners request that the Commission confirm that the transport described herein qualifies as dedicated transport and that the incumbent LECs immediately begin working with the CMRS carriers to begin converting those facilities to UNEs. In particular, the Commission should: (i) direct that the conversion of existing facilities requires a simple billing change that can be accomplished through a straightforward process such as submitting spreadsheets identifying circuits for conversion; (ii) preclude incumbent LECs from requiring a termination and a new order to convert existing facilities; and (iii) require incumbent LECs to cooperate in a timely and effective manner to help CMRS carriers identify circuits suitable for conversion.

Finally, converting these links to UNEs would not violate any commingling prohibition. In the SOC, the Commission barred carriers from combining tariffed special access services with EEL combinations. This commingling ban only applies when a carrier seeks to access an EEL under one of the so-called safe harbor options established in the SOC to demonstrate substantial local usage.<sup>54</sup> The purpose of this “commingling” ban was only to temporarily freeze IXCs’ ability to bypass special access services by converting them to EELs. Given that CMRS carriers provide telephone exchange service not special access service, the commingling concern is not implicated.

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<sup>54</sup> SOC, 15 FCC Rcd at 9598, ¶ 22 (noting with respect to each of the three safe harbor options that “[t]his option does not allow loop-transport combinations to be connected to the incumbent LEC’s tariffed services.”).

## CONCLUSION

For the foregoing reasons, the CMRS Petitioners respectfully request that the Commission issue a declaratory ruling in a manner consistent with the views expressed herein.

Respectfully Submitted,



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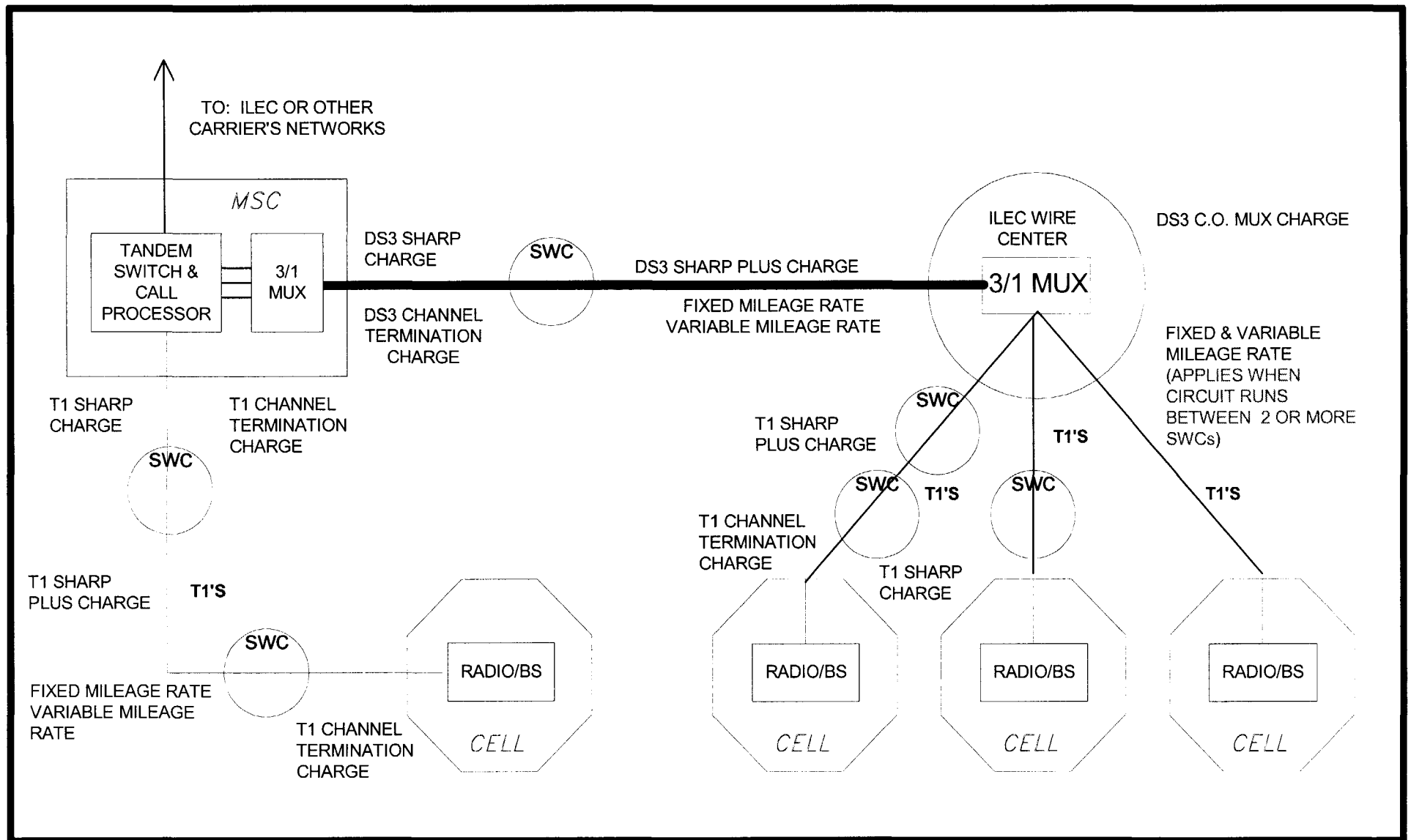
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Dated: November 19, 2001



# PRIVATE LINE NETWORK (Point-to-Point)

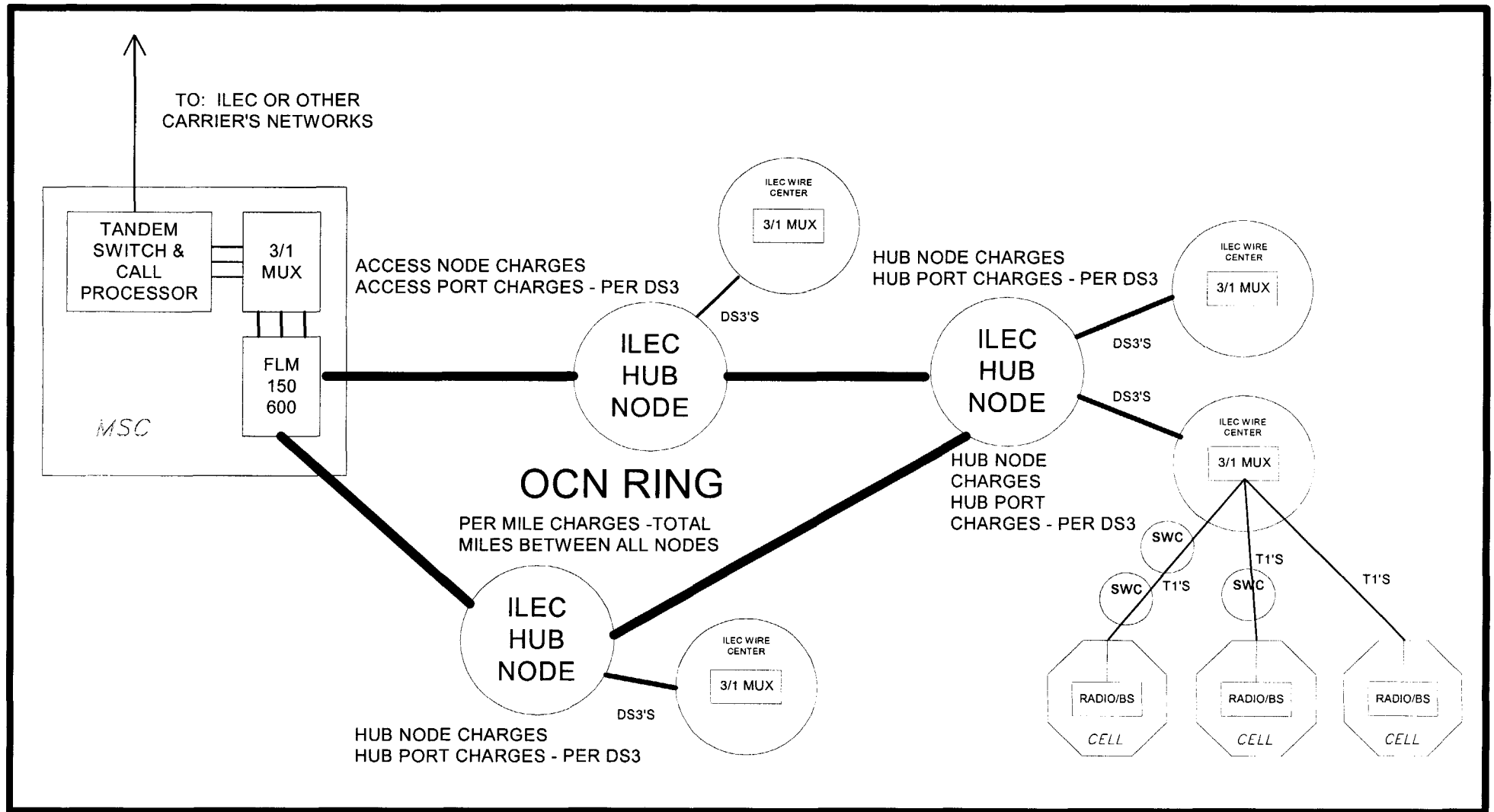






# OCN RING

(Primarily used in Metropolitan Areas)





# PSTN NETWORK

